



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL**

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
1027 N. Randolph Ave.
Elkins, WV 26241**

**Sheila Lee
Interim Inspector General**

November 30, 2022

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 22-BOR-2407

Dear [REDACTED]:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Lisa Rankin, WVDHHR

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW**

████████████████████,

Appellant,

v.

Action Number: 22-BOR-2407

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on November 16, 2022, on an appeal filed October 31, 2022.

The matter before the Hearing Officer arises from the decision by the Respondent to exclude the Appellant's son from the Summer 2022 Pandemic-Electronic Benefit Transfer (P-EBT) issuance.

At the hearing, the Respondent appeared by Lisa Rankin, Family Support Supervisor, WVDHHR. The Appellant appeared *pro se*. All witnesses were sworn in and the following documents were admitted into evidence.

Department's Exhibits:

None

Appellant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) One September 20, 2022, the Appellant e-mailed the Pandemic Electronic Benefits Transfer (P-EBT) website to inquire about why her minor son, [REDACTED], failed to receive the summer P-EBT issuance.
- 2) [REDACTED] turned six (6) years old on December 30, 2021.
- 3) [REDACTED] was enrolled in kindergarten and received home-based schooling for half of the 2021-22 academic year due to his leukemia diagnosis.
- 4) [REDACTED] was removed from school prior to the end of the 2021-22 academic year when he became too ill.
- 5) [REDACTED] was reenrolled in school at [REDACTED] School in August 2022 and is currently a full-time student.
- 6) [REDACTED] did not receive the summer P-EBT benefit, covering the months of May, June, and July 2022.

APPLICABLE POLICY

Pandemic Electronic Benefit Transfer (P-EBT) is part of the U.S. government response to the COVID-19 pandemic. The Families First Coronavirus Response Act of 2020 (PL 116-127), as amended by the Continuing Appropriations Act 2021 and Other Extensions Act (PL 116-159), the Consolidated Appropriations Act 2021 (PL 116-260), and the American Rescue Plan Act of 2021 (PL 117-2), provides the Secretary of Agriculture authority to approve state agency plans to administer P-EBT.

Through P-EBT, eligible school children receive temporary emergency nutrition benefits loaded on EBT cards that are used to purchase food. Children who would have received free or reduced-price meals under the National School Lunch Act if their schools were not closed or operating with reduced hours or attendance for at least 5 consecutive days are eligible to receive P-EBT benefits. P-EBT also provides benefits to younger children in households participating in the Supplemental Nutrition Assistance Program (SNAP) whose covered child care facility is closed or operating with reduced hours or attendance, or who live in the area of schools that are closed or operating with reduced hours or attendance.

Like last summer, P-EBT is available to all school children who were eligible to receive free or reduced-price meals during the current school year, and to school children who are newly determined eligible for meal benefits during the summer months in states that have an approved SY 2021-22 plan for school children and/or children in child care. In such states, P-EBT is also available to all children under 6 who are enrolled in SNAP during the summer.

The FFCRA, as amended by the American Rescue Plan Act, 2021, authorized the USDA to approve an extension of the state P-EBT plan during a covered summer period. The statute defines a covered summer period to mean a summer period that follows a school year during which there was a federal public health emergency declaration.

The FFCRA continues to require that schools participating in the National School Lunch Program and School Breakfast Program and covered child care facilities shall be deemed closed for purposes of the covered summer period. As a practical matter, that means that states with an approved extension for a covered summer period may issue P-EBT benefits during the covered summer period without regard to students' school status, individual COVID-related absences and virtual learning days, or the operating status of covered child care facilities. P-EBT's child care population includes children under the age of 6 who are SNAP recipients.

West Virginia State Plan for Pandemic EBT - Children in School and Child Care - 2021-2022 states:

P-EBT for School Children

Individual Student Eligibility: WVDE's PrimeroEdge software captures student eligibility information based on individual status or enrollment in a Community Eligibility Provision (CEP) school. PrimeroEdge captures free/reduced status in real time for all students participating in the National School Lunch Program (NSLP). The state will be able to identify SNAP and non-SNAP students, for both public and private schools participating in the NSLP. West Virginia conducts direct certification (DC) matching at a more frequent interval than what is required by federal regulations. West Virginia conducts DC matching at weekly intervals for SNAP, TANF and Medicaid, and at monthly intervals for foster students.

Individual Student Enrollment: WVDE's WVEIS system captures enrollment information for WV's public-school students. Only students who are enrolled in school during SY 2021-2022 have active enrollment records in WVEIS, this includes kindergarten students. Students that have graduated are inactive in WVEIS at the end of each school year; these students will not be included in the eligibility file for P-EBT. WVEIS data batches nightly. Any changes in student enrollment for any student newly enrolled/newly withdrawn is captured daily.

Roles and Responsibilities of the State: West Virginia's P-EBT program for SY 2021-2022 will be led jointly by both DHHR and WVDE. DHHR will be the administrative oversight authority.

West Virginia Department of Health and Human Resources (DHHR)

- Statewide administration of SNAP including but not limited to, interpreting and enforcing federal regulations to ensure program integrity, issuing public assistance benefits, handling and tracking payment corrections, provide fair hearings and civil rights notification and managing expungements
- Financial and demographic reporting to FNS
- Managing all EBT processes/procedures
- Providing guidance and requirements for Optum (the eligibility system administrator)

- Contracting sole source call center necessary to facilitate the triage of the initial layer of P-EBT calls for households, provide case information for student families and replace P-EBT cards at guardian request
- Notification to all P-EBT households regarding benefit amounts, providing general program information to the public and internal guidance for eligibility staff
- Accept data monthly from WVDE through a secured file. Eligibility data will be tested for validity before each issuance
- Issuance of P-EBT for all eligible SNAP and non-SNAP students
- Will coordinate effort with all parties to see state P-EBT plan through administration and reporting, while issuing to all students who meet eligibility criteria

West Virginia Department of Education (WVDE)

- Responsible for the administration of the National School Lunch Program (NSLP) for both public and private schools, and the oversight of public education for the state
- Operates and maintains the statewide education information system (WVEIS) and statewide eligibility system (PrimeroEdge). Both systems utilize data that is provided and owned by county level boards of education
- The Office of Child Nutrition, Office of Data Management and Information Systems, and West Virginia Education Information System Office will provide initial and ongoing training to county boards of education regarding P-EBT program eligibility
- Process and procedure management for ensuring county-level enrollment data is accurate and complete
- Providing and confirming data elements necessary to issue student benefits and send a secured data file to DHHR that includes benefit level, P-EBT payment due, household demographic information and WVEIS # for issuance of P-EBT
- Assist with providing training for P-EBT call center for triage of information
- Operate and maintain statewide P-EBT informational website
- Handle all dispute/correction issues of student P-EBT benefits

P-EBT for Children in Child Care

West Virginia's P-EBT non-school/child care plan will be led jointly between the West Virginia Department of Education (WVDE) and West Virginia Department of Health and Human Resources (DHHR). Programs have 60 days following the end of each month to submit claims for Child and Adult Care Food Program (CACFP) meals. West Virginia proposes using the most current CACFP lunch meal data available for child care settings to determine both whether West Virginia is eligible to issue nonstudent P-EBT benefits each month and also to set the nonstudent P-EBT benefit amount.

WVDE collects and monitors CACFP meal data serviced in child care settings. Programs have 60 days following the end of each month to submit claims for CACFP meals. West Virginia proposes using the most current CACFP lunch meal data available for child care settings to determine both whether West Virginia is eligible to issue nonstudent P-EBT benefits each month and also to set the nonstudent P-EBT benefit amount.

The West Virginia Department of Health and Human Resources (DHHR) is the agency responsible for the statewide administration of SNAP; interpreting and enforcing federal regulations to ensure program integrity; issuing public assistance benefits; handling and tracking payment corrections; managing expungements; managing EBT process and procedures; and reporting issuances to FNS.

DHHR will also be responsible for providing program communication to county DHHR staff, SNAP households and the public. DHHR will receive CACFP meal data from WVDE through a secured file. Eligibility data will be tested before each issuance. DHHR is responsible for P-EBT issuance to all eligible children. DHHR is responsible for all mass mailings. DHHR will coordinate efforts with all parties to see the P-EBT plan through administration and reporting, while issuing benefits to all students and non-students who meet eligibility criteria.

West Virginia proposes using CACFP data to determine non-school children under 6 are eligible to receive P-EBT if there is a 12% reduction in the number of meals served. All non-school children under 6 must receive SNAP as an eligibility factor.

West Virginia will use SNAP eligibility data from eRAPIDS to confirm *every* child issued P-EBT on or after August 1, 2021, receives SNAP. WVDE CACFP data will be used to confirm eligibility. All regular SNAP privacy protocols will be in place and observed.

There are no state or local order limiting capacity of child care facilities due to COVID-19 in the state of West Virginia. Conversely, since on the onset of COVID-19 pandemic the state has worked with child care providers to continue safely offering services to families of essential workers.

Each month Optum (responsible for maintaining the SNAP eligibility system) will run a report of all children under 6. The state will then cross reference CACFP data provided from WVDE to confirm eligibility. When a child turns 6 years old, he/she is no longer eligible to receive P-EBT as a non-school child. Optum will receive a secured file from WVDE for all children under 6 who received P-EBT under the student plan. Optum will remove all children under 6 who received P-EBT as a student from the non-school P-EBT issuance file monthly.

The state will issue P-EBT to non-school children retroactively. There is a possibility some 3-, 4-, and 5-year-old children may be eligible for P-EBT as a student and a non-student. In the situation, the state will issue P-EBT to the child as a student. If the child has a WVEIS number, the child **MUST** be issued as a student. The state will cross reference data used to determine student eligibility to ensure that no child is issued more than a single P-EBT benefit in any benefit period.

Disputes/Corrections: Guardians seeking to dispute student benefit amounts will be directed to contact the P-EBT call center. The call center will add disputes to a database that will be sent to WVDE on a daily basis. Once WVDE receives the dispute, the dispute will be routed to the appropriate county school system for resolution. WVDE will reconcile disputes monthly and provide the information to DHHR for processing at the next dispute/correction issuance date. All guardians/students of a positively verified dispute/correction will receive a corresponding letter telling the household the amount of P-EBT due and corresponding benefit period.

All summer 2022 EBT SNAP benefits were issued August 22, 2022. The benefit dispute period for students expired August 25, 2022, and expired September 2, 2022, for non-students.

DISCUSSION

Pursuant to the FFCRA and its amendments, P-EBT SNAP benefits are available to all school-aged children whose access to meals provided through the National School Lunch Act was interrupted due to the public health emergency. The FFCRA also provides P-EBT benefits to non-student children under the age of 6 who are SNAP recipients. West Virginia received an extension for the 2021-2022 school year to issue P-EBT to all eligible school-aged children and non-school children for the summer of 2022.

WVDE's WVEIS system captures enrollment information for West Virginia's public-school students. Only students who are enrolled in school during SY 2021-2022 have active enrollment records in WVEIS, this includes kindergarten students.

The Appellant contested the exclusion of her son from the 2022 Summer P-EBT payment. She testified that her son stopped attending home-based schooling during the 2021-22 academic year due to his illness. He reenrolled in school in August 2022 and now attends full-time.

As the Appellant's son turned six years old in December 2021 and was not enrolled in school at the close of the 2021-22 academic year, he is ineligible to receive the Summer P-EBT payment as either a non-student or a student.

CONCLUSIONS OF LAW

- 1) Funding authorized through the FFCRA allowed students enrolled during the 2021-2022 school year to receive extended P-EBT benefits during the covered summer period as part of the COVID-19 public health emergency.
- 2) The FFCRA also provided P-EBT benefits to non-student children under the age of six (6) who are SNAP recipients.
- 3) West Virginia received an extension for the 2021-2022 school year to issue P-EBT benefits for the summer of 2022.
- 4) Only students who were enrolled in school during SY 2021-2022 have active enrollment records in WVEIS.
- 5) The Appellant's son turned six (6) years old in December 2021.
- 6) The Appellant's son was not enrolled in school at the end of the 2021-22 academic year due to his illness.

- 7) As the Appellant's son turned six (6) in December 2021 and was not actively enrolled in school at the end of 2021-22 academic year, he was ineligible to receive the Summer P-EBT payments available to students and non-students.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the action of the Respondent to exclude the Appellant's son from the Summer 2022 P-EBT issuance.

ENTERED this 30th day of November 2022.

**Pamela L. Hinzman
State Hearing Officer**